2 Am. Jur. 2d Administrative Law II C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 8, 103.1, 301 to 309.1, 316, 318, 322.1 to 328, 331, 428 to 437

A.L.R. Library

A.L.R. Index, Administrative Law
West's A.L.R. Digest, Administrative Law and Procedure 8, 103.1, 301 to 309.1, 316, 318, 322.1 to 328, 331, 428 to 437

End of Document

2 Am. Jur. 2d Administrative Law § 45

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 45. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 301 to 309.1

The primary function of administrative agencies is to carry into effect the will of the State as expressed by its legislation.[1]Administrative agencies are vested with the responsibility to consistently interpret guidelines to avoid arbitrary and capricious results.[2]Broadly speaking, agencies are expected to consider reasonable alternatives to proposed actions[3]and, in doing so, are permitted to assess the wisdom of their policies on a continuing basis.[4]

While some agencies act merely as investigative or advisory bodies,[5]administrative agencies may have executive, administrative, investigative, legislative, or adjudicative powers.[6]In addition, some statutory schemes provide for or permit administrative enforcement,[7]and some agencies are given express authority to reconsider, amend, correct, or modify orders that would otherwise be final or to monitor conditions over time to best implement a particular statutory scheme.[8]

Whether a particular administrative agency has a certain power is primarily a matter of statutory construction.[9]The fact that an asserted power is novel and unprecedented does not mean that it does not exist.[10]An agency may act within its authority even if its action is later determined to be legally erroneous.[11]

Footnotes

1 Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A.L.R. 1217 (1941); Rosenthal v. State Emp. Retirement System, 30 N.J. Super. 136, 103 A.2d 896 (App. Div. 1954).

2 Biloxi HMA, Inc. v. Singing River Hosp., 743 So. 2d 979 (Miss. 1999).

3 Central Maine Power Co. v. F.E.R.C., 252 F.3d 34 (1st Cir. 2001).

[4] SKF USA Inc. v. U.S., 254 F.3d 1022 (Fed. Cir. 2001).

[5] Hannah v. Larche, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307 (1960); Town of Burlington v. Dunn, 318 Mass. 216, 61 N.E.2d 243, 168 A.L.R. 1181 (1945); In re Di Brizzi, 303 N.Y. 206, 101 N.E.2d 464 (1951).

[6] Yesson v. San Francisco Municipal Transportation Agency, 224 Cal. App. 4th 108, 168 Cal. Rptr. 3d 212 (1st Dist. 2014).

[7] Allen v. Grand Central Aircraft Co., 347 U.S. 535, 74 S. Ct. 745, 98 L. Ed. 933 (1954).

[8] 1000 Friends of Oregon v. Land Conservation and Development Com'n, 301 Or. 622, 724 P.2d 805 (1986).

[9] State ex rel. Com'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).
As to the administrative construction of statutes, see §§ 67 to 73.

[10] U.S. v. Morton Salt Co., 338 U.S. 632, 70 S. Ct. 357, 94 L. Ed. 401 (1950); State ex rel. Com'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

[11] Custer County Action Ass'n v. Garvey, 256 F.3d 1024 (10th Cir. 2001).

End of Document

2 Am. Jur. 2d Administrative Law § 46

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 46. Characterization and classification of administrative powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 326

Administrative powers are executive, legislative, or judicial in nature although not specifically allocated.[1]Administrative power is the power to administer or enforce a law, as opposed to the legislative power to make a law.[2]Administration has to do with the carrying of laws into effect, that is, their practical application to current affairs, in accordance with and in execution of the principles prescribed by the lawmaker.[3]Thus, regulatory and control powers of an administrative agency are frequently described as "administrative."[4]The power of an administrative agency to make rules to carry out a policy is administrative.[5]The application of such rules in particular cases is executive or administrative in nature.[6]

Observation:

The issue of an administrative body's authority presents a question of law and not a question of fact.[7]

Footnotes

1 Guiseppi v. Walling, 144 F.2d 608, 155 A.L.R. 761 (C.C.A. 2d Cir. 1944), judgment aff'd, 324 U.S. 244, 65 S. Ct. 605, 89 L. Ed. 921 (1945).

2 Citizens' Utility Ratepayer Bd. v. State Corp. Com'n of State of Kan., 264 Kan. 363, 956 P.2d 685 (1998).

[3] Mitchell Coal & Coke Co. v. Pennsylvania R. Co., 230 U.S. 247, 33 S. Ct. 916, 57 L. Ed. 1472 (1913); Robertson v. Schein, 305 Ky. 528, 204 S.W.2d 954 (1947).

[4] Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 70 S. Ct. 403, 94 L. Ed. 381 (1950); Guthrie v. Curlin, 263 S.W.2d 240 (Ky. 1953).

[5] U.S. v. Grimaud, 220 U.S. 506, 31 S. Ct. 480, 55 L. Ed. 563 (1911); Knudsen Creamery Co. of Cal. v. Brock, 37 Cal. 2d 485, 234 P.2d 26 (1951); Department of Public Welfare v. National Help "U" Ass'n, 197 Tenn. 8, 270 S.W.2d 337 (1954).

[6] Gulf, M. & O. R. Co. v. Railroad and Public Utilities Com'n, 38 Tenn. App. 212, 271 S.W.2d 23 (1954).

[7] County of Knox ex rel. Masterson v. Highlands, L.L.C., 188 Ill. 2d 546, 243 Ill. Dec. 224, 723 N.E.2d 256 (1999).

End of Document

2 Am. Jur. 2d Administrative Law § 47

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 47. Source of powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305

Being creatures of the legislature,[1] administrative agencies have no general or common-law powers[2] but only those powers conferred upon them by statute or constitution.[3] An agency must act in accordance with the applicable statutes and its own regulations.[4] Apart from the instances in which an administrative agency is created and empowered by a provision of a state constitution or an executive order,[5] the source of the powers of administrative agencies lies in statutes,[6] and administrative agencies must find within the statutes warrant for the exercise of any authority which they claim.[7]

CUMULATIVE SUPPLEMENT

Cases:

Administrative agencies have no general or common-law powers, but only such as have been conferred upon them by law expressly or by implication. PNGI Charles Town Gaming, LLC v. West Virginia Racing Com'n, 765 S.E.2d 241 (W. Va. 2014).

[END OF SUPPLEMENT]

Footnotes

1 In re Hubbard, 778 N.W.2d 313 (Minn. 2010); New York State Superfund Coalition, Inc. v. New York State Dept. of

Environmental Conservation, 18 N.Y.3d 289, 938 N.Y.S.2d 266, 961 N.E.2d 657 (2011); Texas Natural Resource Conservation Com'n v. Lakeshore Utility Co., Inc., 164 S.W.3d 368 (Tex. 2005).

[2] Woodard v. Jefferson County, 18 Fed. Appx. 706 (10th Cir. 2001); Gaffney v. Board of Trustees of Orland Fire Protection Dist., 2012 IL 110012, 360 Ill. Dec. 549, 969 N.E.2d 359 (Ill. 2012).
As to implied and inherent powers, generally, see § 54.

[3] § 51.

[4] Paralyzed Veterans of America v. West, 138 F.3d 1434 (Fed. Cir. 1998).

[5] § 20.

[6] Florida Elections Commission v. Davis, 44 So. 3d 1211 (Fla. 1st DCA 2010); Adamson v. Correctional Medical Services, Inc., 359 Md. 238, 753 A.2d 501 (2000).
The terms of the enabling statute establish the scope of agency authority. Yeboah v. U.S. Dept. of Justice, 345 F.3d 216 (3d Cir. 2003).

[7] M & J Garage and Towing, Inc. v. West Virginia State Police, 227 W. Va. 344, 709 S.E.2d 194 (2010); Exxon Mobil Corp. v. Wyoming Dept. of Revenue, 2011 WY 161, 266 P.3d 944 (Wyo. 2011).
As to statutes relating to administrative agencies, generally, see §§ 28 to 30.

End of Document

2 Am. Jur. 2d Administrative Law § 48

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 48. Source of powers—Legislative standards

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 301, 305

A statute or ordinance placing discretionary power in an administrative agency must furnish standards for those who administer such power.[1]The law must enunciate standards to guide the administrative officers where the legislature delegates to an administrative agency the power to determine a fact or state of things upon which an application of the law depends.[2]The standards which must accompany such a grant of power must not be unlimited, be unreasonable, or permit arbitrary action by the administrative body.[3]Failure to determine such standards may render the statute void.[4]

Observation:

While adequate standards must be included in the delegating legislation,[5]the realities of modern legislation dealing with complex economic and social problems have led to judicial approval of broad standards for administrative actions.[6]Detailed standards are not required, especially in regulatory enactments under the police power.[7]

CUMULATIVE SUPPLEMENT

Cases:

Scope of provision of Affordable Care Act (ACA) prohibiting Department of Health and Human Services (HHS) from promulgating regulation that creates unreasonable barrier to ability of individuals to obtain appropriate medical care was not limited to ACA. 42 U.S.C.A. § 18114. State v. Azar, 385 F. Supp. 3d 960 (N.D. Cal. 2019), stay pending appeal denied, 2019 WL 2029066 (N.D. Cal. 2019) and stay pending appeal denied, 2019 WL 2996441 (N.D. Cal. 2019).

The Legislature may constitutionally delegate its legislative powers to an administrative body so long as it sets forth a policy, rule, or standard for guidance and does not vest them with an arbitrary and uncontrolled discretion. State v. Spady, 2015 MT 218, 380 Mont. 179, 354 P.3d 590 (2015).

To withstand the charge of unconstitutional delegation of legislative power to an administrative agency, a statute must establish reasonable standards to govern the achievement of its purpose and the execution of the power that it confers to the agency. Chittenden County Sheriff's Department v. Department of Labor, 2020 VT 4, 228 A.3d 85 (Vt. 2020).

[END OF SUPPLEMENT]

Footnotes

[1] Hobbs v. Jones, 2012 Ark. 293, 412 S.W.3d 844 (2012); Texas Workers' Compensation Com'n v. Patient Advocates of Texas, 136 S.W.3d 643 (Tex. 2004).
As to discretionary power in this regard, see §§ 55, 56.

[2] In re McClain, 741 S.E.2d 893 (N.C. Ct. App. 2013), review denied, 743 S.E.2d 188 (N.C. 2013); Fahn v. Cowlitz County, 93 Wash. 2d 368, 610 P.2d 857 (1980), opinion amended on other grounds, 621 P.2d 1293 (Wash. 1981).

[3] State v. Union Tank Car Co., 439 So. 2d 377 (La. 1983).

[4] Balmoral Racing Club, Inc. v. Illinois Racing Bd., 151 Ill. 2d 367, 177 Ill. Dec. 419, 603 N.E.2d 489 (1992).

[5] Hobbs v. Jones, 2012 Ark. 293, 412 S.W.3d 844 (2012); Elizabeth River Crossings OpCo, LLC v. Meeks, 286 Va. 286, 749 S.E.2d 176 (2013).

[6] Kaufman v. State Dept. of Social and Rehabilitative Services, 248 Kan. 951, 811 P.2d 876 (1991); State ex rel. Com'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

[7] State ex rel. Com'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

2 Am. Jur. 2d Administrative Law § 49

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 49. Source of powers—Ratification and validation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1

Acts of administrative agencies unauthorized at the time may become valid and binding by ratification[1] unless the attempted ratification is made at a time when the ratifying authority could not lawfully do the act, or there are substantial intervening rights.[2] The fact that a validating act is retroactive does not, in itself, render it ineffective.[3] When the legislature ratifies the act, it becomes the act of the legislature, eliminating any question of delegation.[4]

Ratification may be implied as well as express.[5] However, whether there is an implied ratification depends on the circumstances of the case. Implied ratification is insufficient to show a delegation of authority to take action within an area of questionable constitutionality[6] or to eliminate limitations upon the powers of an agency.[7]

Footnotes

1 Ex parte Mitsuye Endo, 323 U.S. 283, 65 S. Ct. 208, 89 L. Ed. 243 (1944); Haggerty v. City of Oakland, 161 Cal. App. 2d 407, 326 P.2d 957, 66 A.L.R.2d 718 (1st Dist. 1958) (disapproved of on other grounds by, Wong v. Di Grazia, 60 Cal. 2d 525, 35 Cal. Rptr. 241, 386 P.2d 817 (1963)).

2 Forbes Pioneer Boat Line v. Board of Com'rs of Everglades Drainage Dist., 258 U.S. 338, 42 S. Ct. 325, 66 L. Ed. 647 (1922).

3 Swayne & Hoyt v. U.S., 300 U.S. 297, 57 S. Ct. 478, 81 L. Ed. 659 (1937).

4 City of Harrison v. Snyder, 217 Ark. 528, 231 S.W.2d 95 (1950).

5 See Hirabayashi v. U.S., 320 U.S. 81, 63 S. Ct. 1375, 87 L. Ed. 1774 (1943).

[6] Greene v. McElroy, 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959).

[7] Peters v. Hobby, 349 U.S. 331, 75 S. Ct. 790, 99 L. Ed. 1129 (1955).

End of Document

2 Am. Jur. 2d Administrative Law § 50

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 50. Construction of statutes granting powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305

Some courts find that statutes granting powers to agencies must be strictly construed as conferring only those powers stated or necessarily implied,[1] in order to preclude the exercise of a power which is not expressly granted.[2] However, other courts consider that authority given to an agency should be liberally construed in order to permit the agency to carry out its statutory responsibilities[3] and that incidental powers should be readily implied.[4] Moreover, where the agency is concerned with protecting the public health and welfare, the delegation of authority to the agency is liberally construed.[5]

CUMULATIVE SUPPLEMENT

Cases:

Whether judicial power is reasonably necessary as an incident to accomplishment of the purposes for which an administrative office or agency was created must be determined in each instance in light of the purpose for which agency was established and in light of nature and extent of judicial power undertaken to be conferred. West's N.C.G.S.A. Const. Art. 4, § 3. Kindsgrab v. State Bd. of Barber Examiners, 763 S.E.2d 913 (N.C. Ct. App. 2014).

[END OF SUPPLEMENT]

Footnotes

[1] In re Indiana Michigan Power Co., 297 Mich. App. 332, 824 N.W.2d 246 (2012), appeal denied, 493 Mich. 946, 827 N.W.2d 723 (2013); Governor's Policy Research Office v. KN Energy, 264 Neb. 924, 652 N.W.2d 865 (2002); Mayland v. Flitner, 2001 WY 69, 28 P.3d 838 (Wyo. 2001).

[2] Racine Fire and Police Commission v. Stanfield, 70 Wis. 2d 395, 234 N.W.2d 307 (1975).

[3] In re Adoption of N.J.A.C. 7:15-5.24(b), 420 N.J. Super. 552, 22 A.3d 94 (App. Div. 2011).

[4] § 54.

[5] Pennsylvania Builders Ass'n v. Department of Labor and Industry, 4 A.3d 215 (Pa. Commw. Ct. 2010); City of Columbia v. Board of Health and Environmental Control, 292 S.C. 199, 355 S.E.2d 536 (1987).

End of Document

2 Am. Jur. 2d Administrative Law § 51

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 51. General limitations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305 to 307

A determination of the limits of an agency's authority requires the construction of the agency's enabling statute.[1]An administrative agency only has those powers expressly conferred upon it by statute[2]or constitution[3]and such as are implied by their grant of authority.[4]Confining delegated lawmaking authority within its intended bounds helps to assure that ultimate control over policymaking rests with the legislative branch of government rather than with unelected administrative officials.[5]

An agency has no power to act in conflict with the authority granted to it by the legislature[6]or outside of its own regulations.[7]In addition, an agency may not exceed its statutory authority[8]or constitutional limitations,[9]and administrative actions exceeding authority delegated by law are void.[10]An agency cannot expand its granted powers by its own authority,[11]nor can it confer jurisdiction upon itself.[12]

Observation:

Concern that agency interpretation of a statute exceeds the limits of power granted by Congress is heightened where the interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.[13]

CUMULATIVE SUPPLEMENT

Cases:

Unlike an agency's interpretation of ambiguous statutory terms or its own regulations, an agency has no special competence or role in interpreting a judicial decision. Glatt v. Fox Searchlight Pictures, Inc., 791 F.3d 376 (2d Cir. 2015).

When Congress directs an agency to consider only certain factors in reaching an administrative decision, the agency is not free to trespass beyond the bounds of its statutory authority by taking other factors into account. Murray Energy Corporation v. Environmental Protection Agency, 936 F.3d 597 (D.C. Cir. 2019).

Subject to equitable defenses including laches, a governmental action may be challenged at any time, as ultra vires, when the action itself is beyond the jurisdiction or authority of the administrative body to act. Dubois Livestock, Inc. v. Town of Arundel, 2014 ME 122, 103 A.3d 556 (Me. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Brzowski v. Maryland Home Imp. Com'n, 114 Md. App. 615, 691 A.2d 699 (1997).
As to the construction of statutes granting powers, see § 50.

2 Stiger v. Flippin, 201 Cal. App. 4th 646, 135 Cal. Rptr. 3d 168 (4th Dist. 2011), review denied, (Mar. 14, 2012); Doe v. Sex Offender Registry Bd., 459 Mass. 603, 947 N.E.2d 9 (2011).

3 American Federation of Labor v. Unemployment Ins. Appeals Bd., 13 Cal. 4th 1017, 56 Cal. Rptr. 2d 109, 920 P.2d 1314 (1996); Oklahoma Public Employees Ass'n v. Oklahoma Dept. of Central Services, 2002 OK 71, 55 P.3d 1072 (Okla. 2002); US West Communications, Inc. v. Wyoming Public Service Com'n, 907 P.2d 343 (Wyo. 1995).

4 § 54.

5 Martin v. State, Agency of Transp. Dept. of Motor Vehicles, 175 Vt. 80, 2003 VT 14, 819 A.2d 742 (2003).

6 State ex rel. Brant v. Bank of America, 272 Kan. 182, 31 P.3d 952 (2001); Benson & Gold Chevrolet, Inc. v. Louisiana Motor Vehicle Commission, 403 So. 2d 13 (La. 1981).

7 Nolan v. U.S., 44 Fed. Cl. 49 (1999).

8 District of Columbia Office of Tax and Revenue v. Shuman, 82 A.3d 58 (D.C. 2013); Walsh v. Champaign County Sheriff's Merit Com'n, 404 Ill. App. 3d 933, 344 Ill. Dec. 826, 937 N.E.2d 1167 (4th Dist. 2010).
As to the rulemaking power of agencies, generally, see §§ 127 to 131.

9 Castro v. Viera, 207 Conn. 420, 541 A.2d 1216 (1988).

10 Diageo-Guinness USA, Inc. v. State Bd. of Equalization, 205 Cal. App. 4th 907, 140 Cal. Rptr. 3d 358 (3d Dist. 2012); Pereira v. State Bd. of Educ., 304 Conn. 1, 37 A.3d 625, 278 Ed. Law Rep. 347 (2012); Delgado v. Board of Election Com'rs of City of Chicago, 224 Ill. 2d 481, 309 Ill. Dec. 820, 865 N.E.2d 183 (2007).

11 District of Columbia v. Brookstowne Community Development Co., 987 A.2d 442 (D.C. 2010); Buddy Gregg Motor Homes, Inc. v. Marathon Coach, Inc., 320 S.W.3d 912 (Tex. App. Austin 2010).

12 Southern New England Telephone Co. v. Department of Public Utility Control, 261 Conn. 1, 803 A.2d 879 (2002); In re Campaign for Ratepayers' Rights, 162 N.H. 245, 27 A.3d 726 (2011).

13 Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159, 121 S. Ct. 675, 148 L. Ed. 2d 576 (2001).

End of Document

2 Am. Jur. 2d Administrative Law § 52

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 52. Limitations on manner of exercise

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305, 307

The power of an administrative agency must be exercised in accordance with and in the mode prescribed by the statute or other law bestowing such power.[1] Agency adjudicative power extends only to the ascertainment of facts and the application of existing law to the facts in order to resolve issues within areas of agency expertise.[2] Not only must powers be exercised in the manner directed but also by the officer specified.[3] One dealing with public officials, boards, or commissions must take notice of their authority to act, and the law charges him or her with the knowledge of any and all limitations upon such power.[4]

An agency may not assert the general power given to it and at the same time disregard the essential conditions imposed upon its exercise.[5] Thus, for example, the Federal Administrative Procedure Act states that a sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.[6] Regardless of how serious the problem an administrative agency seeks to address, it may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.[7]

CUMULATIVE SUPPLEMENT

Cases:

Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational. Michigan v. E.P.A., 135 S. Ct. 2699 (2015).

[END OF SUPPLEMENT]

Footnotes

[1] U.S. v. Chicago, M., St. P. & P.R. Co., 282 U.S. 311, 51 S. Ct. 159, 75 L. Ed. 359 (1931); Ethics Com'n of Town of Glastonbury v. Freedom of Information Com'n, 302 Conn. 1, 23 A.3d 1211 (2011).

[2] Mikel v. Pott Industries/St. Louis Ship, 896 S.W.2d 624 (Mo. 1995).

[3] Board of Medical Examiners v. Steward, 203 Md. 574, 102 A.2d 248 (1954); Roper v. Winner, 244 S.W.2d 355 (Tex. Civ. App. San Antonio 1951).

[4] Com. v. Whitworth, 74 S.W.3d 695 (Ky. 2002).

[5] Edgerton v. International Co., 89 So. 2d 488 (Fla. 1956); State ex rel. Public Service Commission v. Northern Pac. Ry. Co., 75 N.W.2d 129 (N.D. 1956).

[6] 5 U.S.C.A. § 558(b).

[7] Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 122 S. Ct. 1155, 152 L. Ed. 2d 167 (2002); Verizon v. F.C.C., 740 F.3d 623 (D.C. Cir. 2014).

End of Document

2 Am. Jur. 2d Administrative Law § 53

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 53. Limitations on manner of exercise—Fundamental fairness and due process

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 301 to 303.1, 305

General due process considerations of fairness directly limit the manner in which an agency may exercise its designated responsibilities.[1] A practice which violates due process cannot be excused because of mere administrative inconvenience.[2] However, the full rights of due process present in a court of law do not automatically attach.[3]

An administrative agency's actions may be only investigatory, only adjudicatory, or a combination of both, and the due process that must be accorded in an administrative proceeding depends upon the nature of the administrative agency's actions.[4] The level of due process required in an administrative setting must be decided under the facts and circumstances of each case.[5] In addition, any administrative agency in determining how best to effectuate public policy is limited by principles of fundamental fairness.[6] There are no simple answers as to what constitutes fundamental fairness, and each case must be considered and evaluated on its merits, giving weight to the effect of the decision on the agency's public policy.[7]

Observation:

Under the *Mathews* balancing test to determine whether an administrative procedure satisfies due process, a court must weigh: (1) the private interest that will be affected by an official action; (2) the risk of erroneous deprivation of such interest or procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.[8]

CUMULATIVE SUPPLEMENT

Cases:

The Supreme Court reviews the administrative proceedings to ensure procedural fairness at the administrative hearing; nonetheless, procedural due process requires fundamental fairness, which, at a minimum, necessitates notice and a meaningful opportunity for a hearing appropriate to the nature of the case. U.S.C.A. Const.Amend. 14. Schlittenhart v. North Dakota Dept. of Transp., 2015 ND 179, 2015 WL 4184107 (N.D. 2015).

[END OF SUPPLEMENT]

Footnotes

[1] Appeal of Morin, 140 N.H. 515, 669 A.2d 207 (1995); Appleby v. State ex rel. Wyoming Workers' Safety and Compensation Div., 2002 WY 84, 47 P.3d 613 (Wyo. 2002).

[2] State ex rel. Ormet Corp. v. Industrial Com'n of Ohio, 54 Ohio St. 3d 102, 561 N.E.2d 920 (1990).

[3] Medeiros v. Hawaii County Planning Com'n, 8 Haw. App. 183, 797 P.2d 59 (1990).

[4] State ex rel. Hoover v. Smith, 198 W. Va. 507, 482 S.E.2d 124 (1997).

[5] Bragunier Masonry Contractors, Inc. v. Maryland Com'r of Labor and Industry, 111 Md. App. 698, 684 A.2d 6 (1996).

[6] State, Dept. of Environmental Protection v. Stavola, 103 N.J. 425, 511 A.2d 622 (1986); State ex rel. White v. Parsons, 199 W. Va. 1, 483 S.E.2d 1, 66 A.L.R.5th 737 (1996).

[7] State, Dept. of Environmental Protection v. Stavola, 103 N.J. 425, 511 A.2d 622 (1986).

[8] American-Arab Anti-Discrimination Committee v. Reno, 70 F.3d 1045 (9th Cir. 1995).

End of Document

2 Am. Jur. 2d Administrative Law § 54

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 54. Implied and inherent powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305, 325

Generally, administrative agencies have the implied powers that are reasonably necessary in order to carry out the powers expressly granted.[1]The reason for an agency's implied powers is that, as a practical matter, the legislature cannot foresee all the problems incidental to carrying out the duties and responsibilities of the agency.[2]

Courts disagree as to how much latitude administrative agencies have with respect to implied powers. Some courts find wide latitude must be given to administrative agencies in fulfilling their duties.[3]Some of these courts even say that the authority does not have to be "necessary" to effectuate the expressly delegated authority but only "appropriate."[4]Other courts find that powers should not be extended by implication beyond what may be necessary for their just and reasonable execution.[5]Still other courts find that implied powers are "necessarily implied,"[6]meaning an implication which yields so strong a probability of intent to allow these powers that any intention to the contrary cannot be supposed.[7]

An administrative agency has no inherent powers[8]because any authority it has comes from statutes or the constitution.[9]Under some authority, however, implied powers may sometimes be called "inherent."[10]

Footnotes

1 Kaleikini v. Thielen, 124 Haw. 1, 237 P.3d 1067 (2010); Vickers v. Lowe, 150 Idaho 439, 247 P.3d 666 (2011); State ex rel. J.S., 202 N.J. 465, 998 A.2d 409 (2010); Texas Mun. Power Agency v. Public Utility Com'n of Texas, 253 S.W.3d 184 (Tex. 2007).
As to the express grant of powers, generally, see §§ 47, 51.

2 Kaleikini v. Thielen, 124 Haw. 1, 237 P.3d 1067 (2010); Vickers v. Lowe, 150 Idaho 439, 247 P.3d 666 (2011).

[3] Lake County Bd. of Review v. Property Tax Appeal Bd. of State of Ill., 119 Ill. 2d 419, 116 Ill. Dec. 567, 519 N.E.2d 459 (1988).

[4] Matter of Request for Solid Waste Utility Customer Lists, 106 N.J. 508, 524 A.2d 386 (1987).

[5] State ex rel. Com'r of Ins. v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980).

[6] Walker v. Arkansas State Bd. of Educ., 2010 Ark. 277, 365 S.W.3d 899, 280 Ed. Law Rep. 505 (2010); Sullivan Financial Group, Inc. v. Wrynn, 94 A.D.3d 90, 939 N.Y.S.2d 761 (3d Dep't 2012).

[7] Mississippi Public Service Com'n v. Columbus & Greenville Ry. Co., 573 So. 2d 1343 (Miss. 1990).

[8] Ethics Com'n of Town of Glastonbury v. Freedom of Information Com'n, 302 Conn. 1, 23 A.3d 1211 (2011); Dialysis Solution, LLC v. Mississippi State Dept. of Health, 31 So. 3d 1204 (Miss. 2010); Davidson Serles & Associates v. Central Puget Sound Growth Management Hearings Bd., 159 Wash. App. 148, 244 P.3d 1003 (Div. 1 2010).

[9] Belanger & Sons, Inc. v. Department of State, 176 Mich. App. 59, 438 N.W.2d 885 (1989).

[10] Jones v. Keller, 364 N.C. 249, 698 S.E.2d 49 (2010).

End of Document

2 Am. Jur. 2d Administrative Law § 55

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 55. Discretionary powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305, 324

Agencies generally are given broad discretion to exercise their regulatory authority.[1]While the right to exercise discretion is frequently conferred expressly,[2]the duties of administrative agencies also necessarily include the right to exercise discretion.[3]The rationale for agency discretion is that administrative bodies possess experience and specialization that place them at an advantage in making decisions within an agency's areas of expertise.[4]

An agency has broad discretion to determine when and how to hear and decide the matters that come before it,[5]as well as whether or not to prosecute or enforce, through either civil or criminal process.[6]The matter of recusal is generally left to the discretion of the adjudicator, and abuse of that discretion must be shown to reverse a decision not to allow a recusal.[7]Additionally, the decision whether or not to impose a sanction is discretionary.[8]

The question of how best to handle related, yet discrete, issues in terms of procedures is a matter committed to agency discretion.[9]Administrative agencies generally have wide discretion in selecting the means to fulfill the legislature's goals.[10]Administrative authorities are permitted, consistent with the obligations of due process, to adopt rules and policies to carry out statutory duties[11]and to adapt their rules and policies to the demands of changing circumstances.[12]

Observation:

By virtue of its specialized knowledge and authority, an administrative agency alone is empowered to develop that enforcement policy best calculated to achieve the ends contemplated by the legislature and to allocate its available funds and personnel in such a way as to execute its policy efficiently and economically.[13]

CUMULATIVE SUPPLEMENT

Cases:

Under the fundamental principle of statutory interpretation that absent provisions cannot be supplied by the courts, courts cannot impose limits on an agency's discretion that are not supported by the text of the statute. Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 140 S. Ct. 2367 (2020).

Where existing methodology or research in a new area of regulation is deficient, an administrative agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information. Center for Sustainable Economy v. Jewell, 779 F.3d 588 (D.C. Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

[1] Doe v. Sex Offender Registry Bd., 456 Mass. 612, 925 N.E.2d 533 (2010); Unified Sportsmen of Pennsylvania ex rel. their Members v. Pennsylvania Game Commission (PGC), 18 A.3d 373 (Pa. Commw. Ct. 2011).

[2] United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954); Ex parte Anderson, 191 Or. 409, 229 P.2d 633, 29 A.L.R.2d 1051 (1951).

[3] I. C. C. v. Parker, 326 U.S. 60, 65 S. Ct. 1490, 89 L. Ed. 2051 (1945); Handlon v. Town of Belleville, 4 N.J. 99, 71 A.2d 624, 16 A.L.R.2d 1118 (1950); State ex rel. Shafer v. Ohio Turnpike Commission, 159 Ohio St. 581, 50 Ohio Op. 465, 113 N.E.2d 14 (1953).

[4] Save Park County v. Board of County Com'rs of County of Park, 990 P.2d 35 (Colo. 1999).

[5] Tennessee Valley Mun. Gas Ass'n v. F.E.R.C., 140 F.3d 1085 (D.C. Cir. 1998).

[6] J.C. & Associates v. Board of Appeals and Review, 778 A.2d 296 (D.C. 2001).

[7] Herridge v. Board of Registration in Medicine, 420 Mass. 154, 648 N.E.2d 745 (1995).

[8] Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595 (Iowa 1997); Larsen v. Commission on Medical Competency, 1998 ND 193, 585 N.W.2d 801 (N.D. 1998).

[9] Northern Border Pipeline Co. v. F.E.R.C., 129 F.3d 1315 (D.C. Cir. 1997).

[10] Zatz v. U.S., 149 F.3d 144 (2d Cir. 1998); County of Hudson v. Department of Corrections, 152 N.J. 60, 703 A.2d 268 (1997).

[11] Coalition For Fair and Equitable Regulation of Docks on Lake of the Ozarks v. F.E.R.C., 297 F.3d 771 (8th Cir. 2002); In re Public Service Elec. and Gas Company's Rate Unbundling, 167 N.J. 377, 771 A.2d 1163 (2001).

[12] In re Permian Basin Area Rate Cases, 390 U.S. 747, 88 S. Ct. 1344, 20 L. Ed. 2d 312 (1968).

[13] In re Morgan, 144 N.H. 44, 742 A.2d 101 (1999).

End of Document

2 Am. Jur. 2d Administrative Law § 56

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 56. Discretionary powers—Limitations on discretion

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 305, 324

While deference is appropriately shown to agency action because of the expertise and superior knowledge of agencies in their specialized fields, that discretion is not unbounded and must be exercised in a manner that will facilitate judicial review.[1]Thus, the language in a rule allowing for agency discretion does not create unlimited discretion.[2]The discretion which is afforded to administrative agency discretion may not justify the agency in altering, modifying, or extending the reach of the law created by the legislature.[3]Discretion must be exercised according to fair and legal considerations,[4]in accordance with established principles of justice, and not arbitrarily or capriciously,[5]fraudulently, or without factual basis.[6]

Observation:

An agency which has been granted discretion by statute may limit its own discretion in its regulations.[7]

CUMULATIVE SUPPLEMENT

Cases:

First Amendment barred abortion providers and their supporters from recovering damages for abortion opponents' breach of

exhibit agreements flowing from opponents' publication of surreptitiously recorded conversations at providers' conferences and facilities and with providers' targeted staff, obtained through deception by opponents in effort to advance their goal of interfering with women's access to legal abortion, where those damages were caused by subsequent publication of videos and not from breach of agreements themselves. U.S. Const. Amend. 1. Planned Parenthood Federation of America, Inc. v. Center for Medical Progress, 402 F. Supp. 3d 615 (N.D. Cal. 2019).

[END OF SUPPLEMENT]

Footnotes

1 In re Kim, 403 N.J. Super. 378, 958 A.2d 485 (App. Div. 2008).

2 Inova Alexandria Hosp. v. Shalala, 244 F.3d 342 (4th Cir. 2001).

3 State ex rel. Taylor v. Johnson, 1998-NMSC-015, 125 N.M. 343, 961 P.2d 768 (1998).

4 American Broadcasting Co. v. F.C.C., 179 F.2d 437 (D.C. Cir. 1949); Handlon v. Town of Belleville, 4 N.J. 99, 71 A.2d 624, 16 A.L.R.2d 1118 (1950).

5 Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 70 S. Ct. 403, 94 L. Ed. 381 (1950); State Bd. of Medical Examiners v. Beatty, 220 La. 1, 55 So. 2d 761 (1951); Handlon v. Town of Belleville, 4 N.J. 99, 71 A.2d 624, 16 A.L.R.2d 1118 (1950).

6 McDonough v. Goodcell, 13 Cal. 2d 741, 91 P.2d 1035, 123 A.L.R. 1205 (1939).

7 McBride v. Motor Vehicle Div. of Utah State Tax Com'n, 1999 UT 9, 977 P.2d 467 (Utah 1999).

End of Document

2 Am. Jur. 2d Administrative Law § 57

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 57. Ministerial powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 328

If an agency, through rulemaking, decides to remove discretion from its determinations, then it appropriately relegates to itself a ministerial role.[1] A ministerial duty is one in respect to which nothing is left to discretion. It is a simple, definite duty arising under conditions admitted or proved to exist and imposed by law.[2] It is a duty absolute, certain, and imperative, involving mere execution of a specific act arising from fixed and designated facts.[3]

The fact that a necessity may exist for the ascertainment of the facts or conditions, upon the existence of which the performance of an act becomes a clear and specific duty, does not convert a ministerial act into a discretionary one.[4]

Footnotes

1 Maryland Transit Admin. v. Surface Transp. Bd., 700 F.3d 139 (4th Cir. 2012).

2 Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943); Texas State Bd. of Dental Examiners v. Fieldsmith, 242 S.W.2d 213, 26 A.L.R.2d 990 (Tex. Civ. App. Dallas 1951), writ refused n.r.e.

3 People v. May, 251 Ill. 54, 95 N.E. 999 (1911); State ex rel. School Dist. of Scottsbluff v. Ellis, 163 Neb. 86, 77 N.W.2d 809 (1956).
As to the delegation of ministerial powers, see § 65.

4 Independent School Dist. of Danbury v. Christiansen, 242 Iowa 963, 49 N.W.2d 263 (1951); State ex rel. School Dist. of Scottsbluff v. Ellis, 163 Neb. 86, 77 N.W.2d 809 (1956).
As to discretionary powers, generally, see §§ 55, 56.

End of Document

2 Am. Jur. 2d Administrative Law § 58

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

1. In General

§ 58. Power to charge fees for services

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 327

A.L.R. Library

Measure of fees assessable by agency under 31 U.S.C.A. sec. 483a providing that federal agencies shall be self-sustaining to full extent possible, 51 A.L.R. Fed. 588

Congress has stated its intention that federal agencies (except mixed-ownership government corporations), in order to be self-sustaining to the extent possible, should be able to charge fees for each service or thing of value provided to a person (except a person on official business of the United States government).[1] This ability to charge "fees" does not include an ability to levy taxes.[2] Entire agencies are not among those who may be assessed since the statute reaches only to specific charges for specific services to specific individuals or companies.[3]

The head of each agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. These regulations are subject to policies prescribed by the President and must be as uniform as practicable. Each charge must be fair and based on the costs to the government, the value of the service or thing to the recipient, the public policy or interest served, and other relevant facts.[4]

This power does not affect a law of the United States prohibiting the determination and collection of charges and the disposition of those charges and prescribing bases for determining charges although a charge may be redetermined under this provision consistent with the prescribed base.[5]

Footnotes

1 31 U.S.C.A. § 9701(a).

2 National Cable Television Ass'n, Inc. v. U. S., 415 U.S. 336, 94 S. Ct. 1146, 39 L. Ed. 2d 370 (1974).

3 Federal Power Commission v. New England Power Co., 415 U.S. 345, 94 S. Ct. 1151, 39 L. Ed. 2d 383 (1974).

4 31 U.S.C.A. § 9701(b).

5 31 U.S.C.A. § 9701(c).

End of Document

2 Am. Jur. 2d Administrative Law § 59

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

2. Separation of Powers of Government

§ 59. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 8, 103.1, 301

The doctrine of separation of powers declares that governmental powers are divided among the three separate and independent branches of government and broadly operates to distribute the power to make law to the legislature, the power to execute law to the executive, and the power to interpret law to the judiciary. The doctrine ensures that the three branches of government are distinct unto themselves and that they, exclusively, exercise the rights and responsibilities reserved unto them.[1]However, the doctrine of separation of powers is grounded in flexibility and practicality,[2]and administrative agencies combine to a certain extent the three powers of government.[3]Legislative authority may be delegated to an administrative body where sufficient standards are set forth in statutes[4]that establish the manner and circumstance of the exercise of such power.[5]Even broad delegations of authority are permissible under these circumstances.[6]

Nevertheless, the doctrine of separation of powers affects administrative agencies. It is one of the bases for the principle that courts may not usurp the functions of an administrative agency.[7]In addition, separation of powers may be violated where Congress tries to control the execution of its enactment directly instead of indirectly by passing new legislation.[8]Congress' authority to delegate portions of its powers to administrative agencies provides no support for the argument that Congress can constitutionally control the administration of the laws by way of a congressional veto.[9]

Observation:

States often, if not always, decide how power will be distributed among their governmental agencies,[10]and a state constitution may unite legislative and judicial powers in a single entity without constraint by the United States Constitution.[11]

CUMULATIVE SUPPLEMENT

Cases:

Department of Health (DOH) had statutory authority to adopt conflict-of-interest rule, prohibiting evaluator who determines a child's eligibility for early intervention services, and the private agency which employs the evaluator, from providing services to that child under contract with DOH, and did not violate separation of powers doctrine in promulgating it. McKinney's Public Health Law § 2550; McKinney's Public Health Law § 2544(3)(b); McKinney's Public Health Law § 2541(12); 10 NYCRR subpart 69–4. Agencies for Children's Therapy Services, Inc. v. New York State Dept. of Health, 22 N.Y.S.3d 524 (App. Div. 2d Dep't 2015).

[END OF SUPPLEMENT]

Footnotes

1 Am. Jur. 2d, Constitutional Law §§ 237, 238.

2 Am. Jur. 2d, Constitutional Law § 242.

3 Sylvester v. Tindall, 154 Fla. 663, 18 So. 2d 892 (1944); Quesenberry v. Estep, 142 W. Va. 426, 95 S.E.2d 832 (1956).
As to the status of agencies in this regard, generally, see §§ 24 to 26.

4 Kaufman v. State Dept. of Social and Rehabilitative Services, 248 Kan. 951, 811 P.2d 876 (1991); Sullivan v. Board of License Com'rs for Prince George's County, 293 Md. 113, 442 A.2d 558 (1982).
As to legislative standards governing administrative action, see § 48.

5 Kaufman v. State Dept. of Social and Rehabilitative Services, 248 Kan. 951, 811 P.2d 876 (1991).

6 Sullivan v. Board of License Com'rs for Prince George's County, 293 Md. 113, 442 A.2d 558 (1982).

7 American Trucking Ass'ns v. U.S., 344 U.S. 298, 73 S. Ct. 307, 97 L. Ed. 337 (1953).

8 Bowsher v. Synar, 478 U.S. 714, 106 S. Ct. 3181, 92 L. Ed. 2d 583 (1986).

9 I.N.S. v. Chadha, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983).

10 Sweezy v. State of N.H. by Wyman, 354 U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957).

11 Keller v. Potomac Electric Power Co., 261 U.S. 428, 43 S. Ct. 445, 67 L. Ed. 731 (1923).

2 Am. Jur. 2d Administrative Law § 60

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

2. Separation of Powers of Government

§ 60. Encroachment by agency on adjudicative functions of judicial branch

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 8, 103.1, 301

The United States Constitution[1] and some state constitutions have provisions vesting judicial powers in the courts.[2] However, administrative agencies may make factual determinations and even adjudicate rights of the parties without running afoul of the constitutional separation of powers.[3] For instance, Congress can establish under Article I "legislative courts"[4] to serve as special tribunals to examine and determine various matters arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it.[5]

Observation:

Under some authority, it is where an agency purports to enter enforceable judgments that the court has drawn the line of permissibility. This is so because it is the power to render enforceable judgments which is the essence of judicial power.[6] However, some statutes confer power to punish for civil contempt or imply a power to hold persons in criminal contempt.[7]

Footnotes

1 U.S. Const. Art. III, § 1.

2 Am. Jur. 2d, Courts § 5.

[3] Alakai Na Keiki, Inc. v. Matayoshi, 127 Haw. 263, 277 P.3d 988, 280 Ed. Law Rep. 450 (2012); State ex rel. Keasling by Keasling v. Keasling, 442 N.W.2d 118 (Iowa 1989).
As to administrative agencies as judicial bodies or courts, see §§ 24, 25.

[4] Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982).

[5] Crowell v. Benson, 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932).

[6] State ex rel. Keasling by Keasling v. Keasling, 442 N.W.2d 118 (Iowa 1989).

[7] Kennedy v. Kenney Mfg. Co., 519 A.2d 585 (R.I. 1987).

End of Document

2 Am. Jur. 2d Administrative Law § 61

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

2. Separation of Powers of Government

§ 61. Combining investigative, prosecutorial, and judicial powers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 8, 103.1, 301

Some administrative agencies investigate violations of the law and act as accusers or act as advocate or prosecutor as well as judge in the same proceeding.[1]It is typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. This mode of procedure does not violate the administrative procedure act, and it does not violate due process of law.[2]

Observation:

When the legislature gives decision-making authority to an administrative board without violating the separation of powers doctrine embodied in the constitution, that board has a dual character in which some of its acts are within the legislative or administrative area, and others have the effect of a judgment. Such an administrative board is permitted to resolve issues of fact and render decisions affecting private rights that have the same force of obligation and finality as judicial ones.[3]

The danger of unfairness is particularly great in an agency in which there is a high degree of concentration of both prosecuting and judicial functions.[4]Nevertheless, the combination of functions has not been held to violate constitutional rights, such as due process of law,[5]or to deny a fair hearing.[6]However, the interested party in such a case must have the right to cross-examine witnesses and present proof,[7]and a court may determine from the special facts and circumstances present in the case before it that the risk of unfairness is intolerably high.[8]

Footnotes

1 U.S. v. Morton Salt Co., 338 U.S. 632, 70 S. Ct. 357, 94 L. Ed. 401 (1950); People v. Western Air Lines, 42 Cal. 2d 621, 268 P.2d 723 (1954); Board of Medical Examiners v. Steward, 203 Md. 574, 102 A.2d 248 (1954).
As to the status of agencies in this regard, generally, see §§ 24 to 26.

2 Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

3 McKay v. New Hampshire Compensation Appeals Bd., 143 N.H. 722, 732 A.2d 1025 (1999).

4 Mazza v. Cavicchia, 15 N.J. 498, 105 A.2d 545 (1954).
As to the separation of prosecutorial or investigative and adjudicative functions, see §§ 303, 304.

5 Morongo Band of Mission Indians v. State Water Resources Control Bd., 45 Cal. 4th 731, 88 Cal. Rptr. 3d 610, 199 P.3d 1142 (2009).

6 Matter of Permits to Drain related to Stone Creek Channel Improvements and White Spur Drain, 424 N.W.2d 894 (N.D. 1988).

7 Matter of Carberry, 114 N.J. 574, 556 A.2d 314 (1989).

8 Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

End of Document

2 Am. Jur. 2d Administrative Law § 62

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

3. Acting Through Other Persons; Delegation to Subordinates

§ 62. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 322.1, 323, 331

The complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions.[1]Statutes often expressly provide for such delegation by the persons in whom the powers of the agency are directly vested.[2]

The authority to subdelegate need not be expressed in the statute but may be implied if there is a reasonable basis for such implication.[3]However, state courts, in specific instances, have found that the statutory authority of a commission to employ persons as may be necessary to perform its duties does not give the commission authority, either directly or by implication, to deputize those matters which are quasi-judicial in character.[4]Moreover, under certain circumstances, the subdelegation of power may be beyond the scope of authority of an administrative agency or invalid on constitutional grounds.[5]

CUMULATIVE SUPPLEMENT

Cases:

A federal official's sub-delegation to a subordinate official is presumptively permissible, absent affirmative evidence in the original delegation of a contrary intent. Mobley v. C.I.A., 806 F.3d 568 (D.C. Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

[1] Barr v. Matteo, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434 (1959); Pistachio Group of the Ass'n of Food Industries, Inc. v. U.S., 11 Ct. Int'l Trade 668, 671 F. Supp. 31 (1987).

[2] L.P. Steuart & Bro. v. Bowles, 322 U.S. 398, 64 S. Ct. 1097, 88 L. Ed. 1350 (1944); U. S. Health Club, Inc. v. Major, 292 F.2d 665 (3d Cir. 1961); Berkshire Life Ins. Co. v. Maryland Ins. Admin., 142 Md. App. 628, 791 A.2d 942 (2002).

[3] § 64.

[4] Apice v. American Woolen Co., 74 R.I. 425, 60 A.2d 865 (1948); State Tax Commission of Utah v. Katsis, 90 Utah 406, 62 P.2d 120, 107 A.L.R. 1477 (1936).

[5] Warren v. Marion County, 222 Or. 307, 353 P.2d 257 (1960).

End of Document

2 Am. Jur. 2d Administrative Law § 63

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

3. Acting Through Other Persons; Delegation to Subordinates

§ 63. Delegation under federal law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 322.1, 323, 331

Pursuant to federal law, in addition to the authority to delegate conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him or her by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his or her agency,[1] as well as the authority to authorize the publication of advertisements, notices, or proposals.[2] Thus, for instance, agency heads may delegate the authority to issue and promulgate regulations dealing with the discharge of personnel.[3]

The failure of an executive order to name the office of one to whom authority is delegated does not vitiate that order if the person named is an officer appointed by the President and confirmed by the Senate.[4]

Footnotes

1 5 U.S.C.A. § 302(b)(1).

2 5 U.S.C.A. § 302(b)(2).

3 Reed v. Franke, 297 F.2d 17 (4th Cir. 1961).

4 U.S. v. Chemical Foundation, 272 U.S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926).

End of Document

2 Am. Jur. 2d Administrative Law § 64

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

3. Acting Through Other Persons; Delegation to Subordinates

§ 64. Delegation implied from statute or nature of agency

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 322.1, 323, 331

The authority to subdelegate need not be expressed in the statute but may be implied if there is a reasonable basis for such implication.[1]The authority of an agency to delegate a particular function may be found in the power conferred upon an agency to issue regulations or orders as may be deemed necessary or proper in order to carry out its purposes unless by express provision of the statute or by implication it has been withheld.[2]In addition, the authority of an administrative agency to delegate its powers, including its discretionary or quasi-judicial powers, to subordinates within the agency may be implied from the nature of the agency.[3]

Where Congress confers power upon the President of the United States, even if there is no express authority to act by deputies, such authority is implied.[4]Powers bestowed upon the President must, of necessity, be exercised through the various executive departments.[5]Moreover, the necessity of performance of duties in the federal executive departments through subordinates is recognized, and acts of an acting secretary[6]or an assistant secretary[7]or other subordinates[8]are deemed to be acts of the secretary when they are done under his or her sanction and approval.

The same principles have been applied to uphold delegations by lesser federal[9]and by state[10]administrative agencies which, in view of the magnitude of their tasks, are deemed not to have been intended to exercise their discretion personally; further, the same principles which will admit of delegation by an administrative agency in any case may suffice to justify a redelegation by its delegate.[11]

Footnotes

1 Warren v. Marion County, 222 Or. 307, 353 P.2d 257 (1960).
As to implied powers, generally, see § 54.

[2] Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111, 67 S. Ct. 1129, 91 L. Ed. 1375 (1947).
An agency may impliedly delegate administrative authority if it is consistent with the legislative purpose. Santaniello v. New Jersey Dept. of Health and Senior Services, 416 N.J. Super. 445, 5 A.3d 804 (App. Div. 2010).

[3] Kimm v. Rosenberg, 363 U.S. 405, 80 S. Ct. 1139, 4 L. Ed. 2d 1299 (1960).

[4] Shreveport Engraving Co. v. U.S., 143 F.2d 222 (C.C.A. 5th Cir. 1944).

[5] U.S. ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 70 S. Ct. 309, 94 L. Ed. 317 (1950).

[6] Morgan v. U.S., 298 U.S. 468, 56 S. Ct. 906, 80 L. Ed. 1288 (1936).

[7] Hannibal Bridge Co v. U S, 221 U.S. 194, 31 S. Ct. 603, 55 L. Ed. 699 (1911).

[8] United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954).

[9] Louisiana Forestry Ass'n Inc. v. Secretary U.S. Dept. of Labor, 745 F.3d 653 (3d Cir. 2014); Papagianakis v. The Samos, 186 F.2d 257 (4th Cir. 1950).

[10] Krug v. Lincoln Nat. Life Ins. Co., 245 F.2d 848 (5th Cir. 1957).

[11] Shreveport Engraving Co. v. U.S., 143 F.2d 222 (C.C.A. 5th Cir. 1944).

End of Document

2 Am. Jur. 2d Administrative Law § 65

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

3. Acting Through Other Persons; Delegation to Subordinates

§ 65. Type of power, as affecting whether power may be delegated

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 322.1, 323, 331

In all cases of delegated authority, where personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to judgment or discretion, the authority is purely personal and cannot be delegated to another unless there is a special power of substitution either express or necessarily implied.[1] Accordingly, apart from statute, whether administrative officers in whom certain powers are vested or upon whom certain duties are imposed may deputize others to exercise such powers or perform such duties usually depends upon whether the particular act or duty sought to be delegated is ministerial or discretionary or quasi-judicial in nature.[2] Merely administrative and ministerial functions may be delegated to assistants whose employment is authorized,[3] but there generally is no authority to delegate acts discretionary or quasi-judicial in nature.[4]

CUMULATIVE SUPPLEMENT

Cases:

When Labor Commission, through its administrative law judges (ALJs), acts in quasi-judicial role in workers' compensation cases, it cannot delegate its adjudicative authority without running afoul of provision in Utah Constitution, stating that judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the legislature by statute may establish. Utah Const. art. 8, § 1. Ramos v. Cobblestone Centre, 2020 UT 55, 472 P.3d 910 (Utah 2020).

[END OF SUPPLEMENT]

Footnotes

[1] Anderson v. Grand River Dam Authority, 1968 OK 143, 446 P.2d 814 (Okla. 1968).

[2] Riverhead Park Corp. v. Cardinale, 881 F. Supp. 2d 376 (E.D. N.Y. 2012) (applying New York law); Washington Federation of State Employees v. State Dept. of General Admin., 152 Wash. App. 368, 216 P.3d 1061 (Div. 2 2009). As to the distinction between discretionary and ministerial powers, see §§ 55, 57.

[3] Krug v. Lincoln Nat. Life Ins. Co., 245 F.2d 848 (5th Cir. 1957); School Dist. No. 3 of Town of Adams v. Callahan, 237 Wis. 560, 297 N.W. 407, 135 A.L.R. 1081 (1941).

[4] Riverhead Park Corp. v. Cardinale, 881 F. Supp. 2d 376 (E.D. N.Y. 2012) (applying New York law); Gabrilson v. Flynn, 554 N.W.2d 267, 113 Ed. Law Rep. 894 (Iowa 1996).

End of Document

2 Am. Jur. 2d Administrative Law § 66

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

3. Acting Through Other Persons; Delegation to Subordinates

§ 66. Delegation to private parties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 318, 322.1, 323, 331

When Congress has specifically vested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor,[1] and such delegations to nongovernmental entities may be assumed to be improper absent an affirmative showing of congressional authorization.[2] Delegations of administrative authority are suspect when they are made to private parties, particularly to entities whose objectivity may be questioned on the grounds of conflict of interest.[3] An agency abdicates its role as a rational decision maker if it does not exercise its own judgment and instead cedes near total deference to private parties' estimates even if the parties agree unanimously as to the estimated amount.[4] However, subdelegations by federal agencies to private parties are not invalid if the federal agency or official retains final reviewing authority.[5]

Observation:

Whether a state agency may exercise internal management discretion and determine to perform its constitutional or statutory duty using an independent contractor depends upon whether the agency possesses express or implied authority to make such a decision in a particular circumstance.[6]

Footnotes

[1] Perot v. Federal Election Com'n, 97 F.3d 553 (D.C. Cir. 1996).

[2] Gentiva Healthcare Corp. v. Sebelius, 723 F.3d 292 (D.C. Cir. 2013).

[3] Pistachio Group of the Ass'n of Food Industries, Inc. v. U.S., 11 Ct. Int'l Trade 668, 671 F. Supp. 31 (1987).

[4] Texas Office of Public Utility Counsel v. F.C.C., 265 F.3d 313 (5th Cir. 2001).

[5] United Black Fund, Inc. v. Hampton, 352 F. Supp. 898 (D.D.C. 1972).

[6] Oklahoma Public Employees Ass'n v. Oklahoma Dept. of Central Services, 2002 OK 71, 55 P.3d 1072 (Okla. 2002).

End of Document

2 Am. Jur. 2d Administrative Law § 67

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

a. Power of Agencies; In General

§ 67. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 316, 428 to 437

Administrative agencies are generally clothed with the power to construe the law as a necessary precedent to administrative action.[1]Even so, it is axiomatic that an administrative agency has no power to declare a statute void or otherwise unenforceable[2]and has no authority to invalidate a statute on constitutional grounds or to question its validity.[3]

Observation:

An administrative agency has the power and the duty to interpret its own legislative rules just as it has the power and duty to interpret the statutes that it enforces.[4]

Agencies cannot by interpretation enlarge the scope of or change a properly enacted statute.[5]An agency cannot modify, abridge, or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power.[6]Although an administrative agency has the authority and duty to determine its own limits of statutory authority, it is the function of the judiciary to finally decide the limits of the authority of the agency.[7]

CUMULATIVE SUPPLEMENT

Cases:

Where Congress has explicitly provided a definition for a term, and that definition is clear, an agency must follow it when exercising its discretion. Safer Chemicals, Healthy Families v. U.S. Environmental Protection Agency, 943 F.3d 397 (9th Cir. 2019), for additional opinion, see, 2019 WL 6041996 (9th Cir. 2019).

To determine whether the Legislature clearly vested an agency with authority to interpret particular statutes, the appellate court considers the phrases or statutory provisions to be interpreted, their context, the purpose of the statute, and other practical considerations as well as the functions of and duties imposed on the agency. Dairy v. Billick, 861 N.W.2d 814 (Iowa 2015).

[END OF SUPPLEMENT]

Footnotes

[1] City of North Las Vegas v. State Local Government Employee-Management Relations Bd., 261 P.3d 1071, 127 Nev. Adv. Op. No. 57 (Nev. 2011); J.R. Simplot Co., Inc. v. Idaho State Tax Com'n, 120 Idaho 849, 820 P.2d 1206 (1991); Dean v. State, 250 Kan. 417, 826 P.2d 1372 (1992).

[2] Palm Harbor Special Fire Control Dist. v. Kelly, 516 So. 2d 249 (Fla. 1987); HOH Corp. v. Motor Vehicle Industry Licensing Bd., Dept. of Commerce and Consumer Affairs, 69 Haw. 135, 736 P.2d 1271 (1987).

[3] Delgado v. Board of Election Com'rs of City of Chicago, 224 Ill. 2d 481, 309 Ill. Dec. 820, 865 N.E.2d 183 (2007); In re Worker's Compensation Claim of Shryack, 3 P.3d 850 (Wyo. 2000).
As to constitutional questions and claims before agencies, see § 68.

[4] Hoctor v. U.S. Dept. of Agriculture, 82 F.3d 165 (7th Cir. 1996).

[5] Metheny v. Hammonds, 216 F.3d 1307 (11th Cir. 2000) (applying Georgia law); Ex parte State Health Planning and Development Agency, 855 So. 2d 1098 (Ala. 2002); United Ass'n Local Union 246, AFL-CIO v. Occupational Safety and Health Appeals Bd., 199 Cal. App. 4th 273, 131 Cal. Rptr. 3d 74 (3d Dist. 2011).

[6] Castro v. Viera, 207 Conn. 420, 541 A.2d 1216 (1988).

[7] Moderate Income Housing, Inc. v. Board of Review of Pottawattamie County, 393 N.W.2d 324 (Iowa 1986).

End of Document

2 Am. Jur. 2d Administrative Law § 68

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

a. Power of Agencies; In General

§ 68. Constitutional questions and claims before agencies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 316, 430

As a general rule, administrative agencies have no jurisdiction to decide issues of constitutional law.[1] The power delegated by the legislature to an agency generally does not include the inherent authority to decide whether a particular statute or regulation that the agency is charged with enforcing is constitutional.[2]

While some courts have declared that challenges to the constitutionality of a statute or regulation promulgated by an agency are generally beyond the power or jurisdiction of the agency,[3] other courts have found that administrative agencies may consider constitutional claims, although they lack the authority to deal with them dispositively, as the final say on constitutional matters rests with the courts.[4] Yet other authority has found that administrative agencies have the power to declare statutes and rules unconstitutional, when done with care,[5] or that administrative agencies have the power to pass on constitutional questions where relevant and necessary to the resolution of a question concededly within their jurisdiction.[6]

Footnotes

1 Reed v. Arvis Harper Bail Bonds, Inc., 2010 Ark. 338, 368 S.W.3d 69 (2010); Stinemetz v. Kansas Health Policy Authority, 45 Kan. App. 2d 818, 252 P.3d 141 (2011).

2 Doe v. Sex Offender Registry Bd., 459 Mass. 603, 947 N.E.2d 9 (2011).
As a rule, an administrative agency lacks authority to decide the constitutionality of a statute. Edwards Aquifer Authority v. Day, 369 S.W.3d 814 (Tex. 2012).

3 Gilbert v. National Transp. Safety Bd., 80 F.3d 364 (9th Cir. 1996).

[4] Singh v. Reno, 182 F.3d 504 (7th Cir. 1999), as amended on other grounds on denial of reh'g, (Aug. 10, 1999).

[5] Outdoor Media Dimensions Inc. v. State, 331 Or. 634, 20 P.3d 180 (2001).

[6] New Jersey Dept. of Envir. Prot. v. Huber, 213 N.J. 338, 63 A.3d 197 (2013).

End of Document

2 Am. Jur. 2d Administrative Law § 69

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

a. Power of Agencies; In General

§ 69. Purpose of administrative interpretation; clarifying ambiguity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 430, 432

When there is internal conflict in a statute's mandates, the job of the agency administrator is to implement the central aim of the statute.[1] When a legislative prescription is ambiguous, the administrator of such a statute must choose between conflicting reasonable interpretations.[2] Although the secretary of an executive department is free to adopt a reasonable interpretation of an ambiguous statute, the secretary is not free to disregard an unambiguous aspect of a statute to clarify and effect an ambiguous one.[3]

Caution:

Ambiguity anywhere in a statute is not a license to the administrative agency that interprets the statute to roam about that statute looking for other provisions to narrow or expand through the process of definition; rather, the delegated authority to interpret an ambiguous statutory term extends only to the specific subject matter covered by the ambiguous term.[4]

In order to justify construction by either an administrative agency or court, it must first appear that construction is necessary,[5] for while administrative agencies have the authority to interpret the laws which they administer, such interpretation cannot be contrary to clear legislative intent.[6] An unambiguous statute may not be supplemented[7] or altered[8] in the guise of interpretation. If the intent of a statute is clear, both the court and the agency charged with administering the statute must give effect to the unambiguously expressed will of the legislature.[9]

CUMULATIVE SUPPLEMENT

Cases:

When an administrative agency's interpretation of a statute is inconsistent with the statute itself, or when the statute is unambiguous, such administrative interpretation carries little weight. Lancaster County v. Pennsylvania Labor Relations Bd., 124 A.3d 1269 (Pa. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Massachusetts ex rel. Div. of Marine Fisheries v. Daley, 170 F.3d 23 (1st Cir. 1999).

2 Holly Farms Corp. v. N.L.R.B., 517 U.S. 392, 116 S. Ct. 1396, 134 L. Ed. 2d 593 (1996).

3 Mt. Emmons Min. Co. v. Babbitt, 117 F.3d 1167 (10th Cir. 1997).

4 Bower v. Federal Exp. Corp., 96 F.3d 200, 17 A.D.D. 735, 1996 FED App. 0306P (6th Cir. 1996).

5 Cullinan v. McColgan, 80 Cal. App. 2d 976, 183 P.2d 115 (3d Dist. 1947).

6 Abramson v. Florida Psychological Ass'n, 634 So. 2d 610 (Fla. 1994).
Administrative orders and rules that are contrary to legislative intent must be rejected. Dababnah v. West Virginia Bd. of Medicine, 207 W. Va. 621, 535 S.E.2d 220 (2000).

7 Cullinan v. McColgan, 80 Cal. App. 2d 976, 183 P.2d 115 (3d Dist. 1947).

8 Helvering v. Sabine Transp. Co., 318 U.S. 306, 63 S. Ct. 569, 87 L. Ed. 773 (1943); In re Loeb's Estate, 400 Pa. 368, 162 A.2d 207 (1960).

9 American Federation of Government Employees v. Rumsfeld, 262 F.3d 649 (7th Cir. 2001); Haug v. Bank of America, N.A., 317 F.3d 832 (8th Cir. 2003).

End of Document

2 Am. Jur. 2d Administrative Law § 70

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

a. Power of Agencies; In General

§ 70. Requirement that agency follow courts; nonacquiescence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 430

Federal agencies are required to abide by the law of the relevant federal judicial circuit in matters arising within the jurisdiction of that circuit's court of appeals until and unless it is changed by that court of appeals or reversed by the United States Supreme Court.[1] In order to establish agency nonacquiescence, the evidence must demonstrate that the agency has deliberately failed to follow the law of the circuits whose courts have jurisdiction over the cause of action. Where the agency does not formally announce that it will nonacquiesce in a particular decision, the agency's conduct cannot be considered nonacquiescence unless there are substantial differences between agency policy and court holdings and unless these differences have influenced the agency's adjudication of individual cases.[2]

Observation:

Despite the rule regarding the obligation of agencies to follow court precedent, an agency does not have to incorporate dicta as policy, nor does it have to apply a holding beyond the scope of the decision itself. In addition, if the agency finds a principled distinction between a particular set of factual circumstances and the case in which the court articulated its holding, and if the agency believes in good faith that the decision should not be applied in those circumstances, it is entitled to set out the circumstances where the decision would be controlling and where the agency has decided it should not be applied.[3]

Caution:

An agency is bound to follow higher authority only when it acts as an adjudicator and not when it litigates.[4]

Footnotes

1 Industrial TurnAround Corp. v. N.L.R.B., 115 F.3d 248 (4th Cir. 1997).

2 Stieberger v. Sullivan, 738 F. Supp. 716 (S.D. N.Y. 1990).

3 Stieberger v. Sullivan, 738 F. Supp. 716 (S.D. N.Y. 1990).

4 National Organization of Veterans' Advocates, Inc. v. Secretary of Veterans Affairs, 260 F.3d 1365 (Fed. Cir. 2001).

End of Document

2 Am. Jur. 2d Administrative Law § 71

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

a. Power of Agencies; In General

§ 71. Methods of interpretation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 430

The power of an administrative agency to construe and interpret the law is applied in several different ways. The administrative agencies may interpret and construe the law through issuing rules and regulations.[1]An administrative agency may also render interpretations of the law in the course of exercising its adjudicating powers.[2]When, as an incident to its adjudicatory function, an agency interprets a statute, it may apply that new interpretation in the proceeding before it.[3]

As an alternative to acting formally through rulemaking or adjudication, administrative agencies may act informally.[4]In fact, informal action constitutes the bulk of the activity of most administrative agencies.[5]It is action that is neither adjudication nor rulemaking and includes investigating, publicizing, planning, and supervising a regulated industry.[6]In addition, an agency may, even without the statutory authorization to do so, specifically issue interpretations, rulings, or opinions upon the law it administers.[7]

Observation:

The various kinds of action can overlap, and the line between agency rulemaking and adjudication on the one hand and informal action on the other can become blurred.[8]

Footnotes

1 § 127.

2 § 258.

3 Clark-Cowlitz Joint Operating Agency v. F.E.R.C., 826 F.2d 1074 (D.C. Cir. 1987).

4 R & R Marketing, L.L.C. v. Brown-Forman Corp., 158 N.J. 170, 729 A.2d 1 (1999).

5 Matter of Request for Solid Waste Utility Customer Lists, 106 N.J. 508, 524 A.2d 386 (1987).

6 Northwest Covenant Medical Center v. Fishman, 167 N.J. 123, 770 A.2d 233 (2001).

7 Skidmore v. Swift & Co., 323 U.S. 134, 65 S. Ct. 161, 89 L. Ed. 124 (1944); Utah Hotel Co. v. Industrial Commission, 107 Utah 24, 151 P.2d 467, 153 A.L.R. 1176 (1944).

8 Matter of Request for Solid Waste Utility Customer Lists, 106 N.J. 508, 524 A.2d 386 (1987).

End of Document

2 Am. Jur. 2d Administrative Law § 72

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

a. Power of Agencies; In General

§ 72. Effect of interpretation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305, 430, 435

Construction and interpretation by an administrative agency of the law under which it acts provide a practical guide as to how the agency will seek to apply the law.[1] An agency to which the legislative branch has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments.[2] However, despite the fact that the interpretation given to statutes and regulations by administrative agencies is given great weight by the courts,[3] one who chooses to rely upon an interpretative regulation does so at his or her own peril and stands the risk of its not being followed by the courts.[4] An erroneous construction of a statute by a state department cannot operate to confer a legal right in accordance with such construction.[5]

Footnotes

1 Skidmore v. Swift & Co., 323 U.S. 134, 65 S. Ct. 161, 89 L. Ed. 124 (1944).

2 City of Albuquerque v. New Mexico Public Regulation Com'n, 2003-NMSC-028, 134 N.M. 472, 79 P.3d 297 (2003).

3 § 74.

4 Sawyer v. Central Louisiana Elec. Co., 136 So. 2d 153 (La. Ct. App. 3d Cir. 1961); Utah Hotel Co. v. Industrial Commission, 107 Utah 24, 151 P.2d 467, 153 A.L.R. 1176 (1944).

5 Department of Insurance of Indiana v. Church Members Relief Ass'n, 217 Ind. 58, 26 N.E.2d 51, 128 A.L.R. 635 (1940).

End of Document

2 Am. Jur. 2d Administrative Law § 73

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

a. Power of Agencies; In General

§ 73. Change in construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 430, 434, 435

A construction of a statute by those administering it, even though long continued, is not binding on them or their successors if thereafter they become satisfied that a different construction should be given.[1]This is especially true where the earlier construction was clearly erroneous[2]but also applies when the prior construction is merely no longer sound or appropriate.[3]Agencies have leeway to change their interpretations of laws, as well as of their own regulations, provided they explain the reasons for such change and provided that those reasons meet the applicable standard of review.[4]While an agency is not locked into the first interpretation of a statute it embraces, it cannot simply adopt inconsistent positions without presenting some reasoned analysis.[5]An agency may change its interpretation of an underlying statutory provision even absent any alteration in that provision so long as the reason for the change is explained, and the change does not conflict with the underlying statute.[6]

Footnotes

1 Alstate Const. Co. v. Durkin, 345 U.S. 13, 73 S. Ct. 565, 97 L. Ed. 745 (1953); Faingnaert v. Moss, 295 N.Y. 18, 64 N.E.2d 337 (1945).

2 Calbeck v. Travelers Ins. Co., 370 U.S. 114, 82 S. Ct. 1196, 8 L. Ed. 2d 368 (1962).

3 New York Tel. Co. v. F. C. C., 631 F.2d 1059 (2d Cir. 1980).

4 Saint Fort v. Ashcroft, 329 F.3d 191 (1st Cir. 2003).

5 Huntington Hosp. v. Thompson, 319 F.3d 74 (2d Cir. 2003).

[6] Paralyzed Veterans of America v. Secretary of Veterans Affairs, 345 F.3d 1334 (Fed. Cir. 2003).

End of Document

2 Am. Jur. 2d Administrative Law § 74

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

b. Effect Given by Courts

§ 74. Generally; deference rule

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 431

A.L.R. Library

Construction and Application of "Chevron Deference" to Administrative Action by United States Supreme Court, 3 A.L.R. Fed. 2d 25

Generally, permissible[1] constructions given to ambiguous statutes[2] by agencies responsible for their administration are entitled to great weight[3] or deference[4] by the courts if neither irrational[5] nor unreasonable.[6] Reviewing courts must respect the judgment of an agency empowered to apply an ambiguous law to varying fact patterns even if the issue, with equal reason, is capable of being resolved one way rather than another.[7]

Observation:

A court must defer to an agency's interpretation of a statutory ambiguity that concerns the scope of the agency's statutory authority, that is, its jurisdiction; no matter how it is framed, the question a court faces when confronted with an agency's interpretation of a statute it administers is always, simply, whether the agency has stayed within the bounds of its statutory authority.[8]

On the other hand, where the administrative construction is manifestly wrong or clearly erroneous,[9] arbitrary,[10] or unreasonable,[11] it is not binding and will not be followed.

In any event, the construction of statutes and other laws is a matter which ultimately is for the courts.[12]

CUMULATIVE SUPPLEMENT

Cases:

In the usual course, when an agency is authorized by Congress to issue regulations and promulgates a regulation interpreting a statute it enforces, the interpretation receives deference if the statute is ambiguous and if the agency's interpretation is reasonable, and this principle is implemented by the two-step analysis set forth in *Chevron*. Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117 (2016).

Administrative interpretations of statutory provisions qualify for *Chevron* deference when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority. Anna Jacques Hosp. v. Burwell, 797 F.3d 1155 (D.C. Cir. 2015).

When a provision of law vests interpretive discretion in an agency, court may reverse only if the agency's interpretation was irrational, illogical, or wholly unjustifiable. Iowa Code Ann. § 17A.19(10)(l). United Electrical, Radio & Machine Workers of America v. Iowa Public Employment Relations Board, 928 N.W.2d 101 (Iowa 2019).

For purposes of giving weight to the positions of administrative agencies, it does not matter whether an agency has been consistent in its rulings; this is because an agency's prior rulings and policies themselves are not entitled to great weight, unless expressed in regulations. Nielsen Co. (US), LLC v. County Bd. of Arlington County, 767 S.E.2d 1 (Va. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).

2 Presley v. Etowah County Com'n, 502 U.S. 491, 112 S. Ct. 820, 117 L. Ed. 2d 51 (1992); Eid v. Thompson, 740 F.3d 118 (3d Cir. 2014); Combs v. Chapal Zenray, Inc., 357 S.W.3d 751 (Tex. App. Austin 2011), reh'g overruled, (Jan. 25, 2012) and review denied, (Dec. 14, 2012).

3 Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984); Fishburn v. Indiana Public Retirement System, 2 N.E.3d 814 (Ind. Ct. App. 2014); Avenue Nursing Home and Rehabilitation Centre v. Shah, 112 A.D.3d 1178, 977 N.Y.S.2d 774 (3d Dep't 2013).

4 Negusie v. Holder, 555 U.S. 511, 129 S. Ct. 1159, 173 L. Ed. 2d 20 (2009); Nativi v. Deutsche Bank National Trust Company, 223 Cal. App. 4th 261, 167 Cal. Rptr. 3d 173 (6th Dist. 2014), review denied, (Apr. 30, 2014); Federal Nat. Mortg. Ass'n v. Sundquist, 2013 UT 45, 311 P.3d 1004 (Utah 2013), petition for certiorari filed, 82 U.S.L.W. 3453 (U.S. Jan. 14, 2014).

5 Democko v. Iowa Dept. of Natural Resources, 840 N.W.2d 281 (Iowa 2013); Lumpkin v. Department of Social Services, 45 N.Y.2d 351, 408 N.Y.S.2d 421, 380 N.E.2d 249 (1978).

[6] Presley v. Etowah County Com'n, 502 U.S. 491, 112 S. Ct. 820, 117 L. Ed. 2d 51 (1992); Federal Nat. Mortg. Ass'n v. Sundquist, 2013 UT 45, 311 P.3d 1004 (Utah 2013), petition for certiorari filed, 82 U.S.L.W. 3453 (U.S. Jan. 14, 2014).

[7] Holly Farms Corp. v. N.L.R.B., 517 U.S. 392, 116 S. Ct. 1396, 134 L. Ed. 2d 593 (1996).

[8] City of Arlington, Tex. v. F.C.C., 133 S. Ct. 1863 (2013).

[9] Federal Maritime Bd. v. Isbrandtsen Co., 356 U.S. 481, 78 S. Ct. 851, 2 L. Ed. 2d 926 (1958); Iowa Federation of Labor, AFL-CIO v. Iowa Dept. of Job Service, 427 N.W.2d 443 (Iowa 1988); Durrett v. Bryan, 14 Kan. App. 2d 723, 799 P.2d 110 (1990).

[10] Eid v. Thompson, 740 F.3d 118 (3d Cir. 2014); In re S.H., 2013 PA Super 165, 71 A.3d 973 (2013), appeal denied, 80 A.3d 778 (Pa. 2013).

[11] Crittenden v. Cook County Com'n of Human Rights, 2013 IL 114876, 371 Ill. Dec. 783, 990 N.E.2d 1161 (Ill. 2013); Avenue Nursing Home and Rehabilitation Centre v. Shah, 112 A.D.3d 1178, 977 N.Y.S.2d 774 (3d Dep't 2013).

[12] Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984); Hollinrake v. Iowa Law Enforcement Academy, Monroe County, 452 N.W.2d 598 (Iowa 1990); Durrett v. Bryan, 14 Kan. App. 2d 723, 799 P.2d 110 (1990).

End of Document

2 Am. Jur. 2d Administrative Law § 75

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

b. Effect Given by Courts

§ 75. “Practical” construction

Topic Summary | Correlation Table | References

West’s Key Number Digest

West’s Key Number Digest, Administrative Law and Procedure 303.1, 431, 433

Practical construction, as distinguished from judicial construction, is the interpretation put upon statutes by the actual administration of them by government departments.[1]The practical construction placed on a statute by an agency, if reasonable, is highly persuasive.[2]An actual,[3]proven[4]construction by the administrative agency[5]subsequent to the adoption of a statute[6]is essential to invoke the rule that the courts will give weight to a practical construction by administrative agencies in determining the true meaning of a statute.[7]On the other hand, the court may decline to give force to a construction represented by acts insufficient in rank, frequency, and duration to constitute a settled practice.[8]

Footnotes

1 Department of Insurance of Indiana v. Church Members Relief Ass’n, 217 Ind. 58, 26 N.E.2d 51, 128 A.L.R. 635 (1940).

2 Wiese v. Freedom of Information Com’n, 82 Conn. App. 604, 847 A.2d 1004, 187 Ed. Law Rep. 933 (2004).

3 Railroad Commission v. Houston Natural Gas Corp., 186 S.W.2d 117 (Tex. Civ. App. Austin 1945), writ refused w.o.m.

4 Hunstock v. Estate Development Corp., 22 Cal. 2d 205, 138 P.2d 1, 148 A.L.R. 968 (1943).

5 E. C. Olsen Co. v. State Tax Commission, 109 Utah 563, 168 P.2d 324 (1946).

6 U.S. v. Townsley, 323 U.S. 557, 65 S. Ct. 413, 89 L. Ed. 454 (1945).

[7] Smith v. North Dakota Workers Compensation Bureau, 447 N.W.2d 250, 56 Ed. Law Rep. 1008 (N.D. 1989).

[8] Manning v. Seeley Tube & Box Co. of New Jersey, 338 U.S. 561, 70 S. Ct. 386, 94 L. Ed. 346 (1950); In re Porterfield, 28 Cal. 2d 91, 168 P.2d 706, 167 A.L.R. 675 (1946).

End of Document

2 Am. Jur. 2d Administrative Law § 76

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

b. Effect Given by Courts

§ 76. General limitations on deference

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305, 431 to 433

The deference granted an agency's interpretation of a statute is not absolute.[1]There are general limitations on deference, including—
— the statute must be one subject to construction, that is, ambiguous.[2]
— judicial construction must be wanting.[3]
— the administrative construction must be decisive of the interpretation proposed to the court.[4]
— the administrative construction must be confidently asserted.[5]
— the administrative construction must be made in the discharge of official duty.[6]
— the administrative construction must be reasonable.[7]
— the administrative construction must not enlarge nor restrict the scope of the statute.[8]
— the administrative construction must not conflict with the expressed purpose of the statute and the intention of the legislature.[9]
The traditional deference courts pay to agency interpretation is not to be applied to alter the clearly expressed intent of Congress.[10]Thus, the judiciary must reject administrative constructions which are contrary to clear congressional intent,[11]such as where the legislative history or the purpose and structure of the statute clearly reveal a contrary legislative intent.[12]

CUMULATIVE SUPPLEMENT

Cases:

Chevron deference is not warranted where the regulation is procedurally defective, that is, where the agency errs by failing to follow the correct procedures in issuing the regulation. Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117 (2016).

A party might be foreclosed in some instances from challenging the procedures used by an agency to promulgate a given rule, but where a proper challenge is raised to the agency procedures, and those procedures are defective, a court should not accord *Chevron* deference to the agency interpretation. Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117 (2016).

An unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice, and an arbitrary and capricious regulation of this sort is itself unlawful and receives no *Chevron* deference. Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117 (2016).

Unexplained inconsistency between agency actions is a reason for holding an agency's interpretation to be an arbitrary and capricious change under the Administrative Procedure Act (APA). Western Watersheds Project v. Bernhardt, 428 F. Supp. 3d 327 (D. Or. 2019).

[END OF SUPPLEMENT]

Footnotes

[1] Department of Natural Resources v. Wingfield Development Co., 581 So. 2d 193 (Fla. 1st DCA 1991).

[2] Haggar Co. v. Helvering, 308 U.S. 389, 60 S. Ct. 337, 84 L. Ed. 340 (1940); Combs v. Chapal Zenray, Inc., 357 S.W.3d 751 (Tex. App. Austin 2011), reh'g overruled, (Jan. 25, 2012) and review denied, (Dec. 14, 2012).

[3] Sanford's Estate v. Commissioner of Internal Revenue, 308 U.S. 39, 60 S. Ct. 51, 84 L. Ed. 20 (1939); E. C. Olsen Co. v. State Tax Commission, 109 Utah 563, 168 P.2d 324 (1946).

[4] Propper v. Clark, 337 U.S. 472, 69 S. Ct. 1333, 93 L. Ed. 1480 (1949).

[5] Civil Aeronautics Board v. Delta Air Lines, Inc., 367 U.S. 316, 81 S. Ct. 1611, 6 L. Ed. 2d 869 (1961).

[6] State v. Mutual Life Ins. Co. of New York, 175 Ind. 59, 93 N.E. 213 (1910).

[7] Stewart Park and Reserve Coalition, Inc. (SPARC) v. Slater, 352 F.3d 545 (2d Cir. 2003); Stanford v. Butler, 142 Tex. 692, 181 S.W.2d 269, 153 A.L.R. 1054 (1944).

[8] Jewell Ridge Coal Corp. v. Local No. 6167, United Mine Workers of America, 325 U.S. 161, 65 S. Ct. 1063, 89 L. Ed. 1534 (1945); Ex parte State Health Planning and Development Agency, 855 So. 2d 1098 (Ala. 2002).

[9] Harris v. Alcoholic Beverage Control Appeals Bd., 228 Cal. App. 2d 1, 39 Cal. Rptr. 192 (2d Dist. 1964); Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886, 52 A.L.R.2d 875 (1955).

[10] K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 108 S. Ct. 1811, 100 L. Ed. 2d 313 (1988).

[11] Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).

[12] Chemical Mfrs. Ass'n v. Natural Resources Defense Council, Inc., 470 U.S. 116, 105 S. Ct. 1102, 84 L. Ed. 2d 90 (1985); In re Township of Warren, 132 N.J. 1, 622 A.2d 1257 (1993).

End of Document

2 Am. Jur. 2d Administrative Law § 77

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

b. Effect Given by Courts

§ 77. Implied legislative approval of administrative construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305, 434, 436

Reenactment of a statutory provision without material change indicates legislative approval of its administrative construction.[1] This is especially true where there are repeated reenactments, as in the case of the former federal revenue acts;[2] where the administrative construction has also had judicial approval;[3] or where there is evidence that the legislature considered the administrative history of the statute or was advised of the construction[4] as where there is a long-standing interpretation of the statute by the agency.[5]

The legislature may also adopt an administrative construction of a statute when, subsequent to such construction, it amends the statute.[6] A congressional failure to revise or repeal an agency's interpretation of a statute when amending that statute is persuasive evidence that the interpretation is the one intended by Congress.[7]

CUMULATIVE SUPPLEMENT

Cases:

Re-enactment doctrine, by which Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt it when re-enacting a statute without change, is merely an interpretive tool fashioned by the courts for their own use in construing an ambiguous legislation. Mize v. Pompeo, 482 F. Supp. 3d 1317 (N.D. Ga. 2020).

Consideration of the principle that Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change is secondary to consideration of the text of the statute itself and inapplicable where the court has already found the statutory language itself to be sufficient to establish

its clear meaning. Kiviti v. Pompeo, 467 F. Supp. 3d 293 (D. Md. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Helvering v. Wilshire Oil Co., 308 U.S. 90, 60 S. Ct. 18, 84 L. Ed. 101 (1939); Fajardo v. U.S. Atty. Gen., 659 F.3d 1303 (11th Cir. 2011); Wilson v. State, 272 S.W.3d 686 (Tex. App. Austin 2008).

2 Cammarano v. U.S., 358 U.S. 498, 79 S. Ct. 524, 3 L. Ed. 2d 462 (1959).

3 N.L.R.B. v. Gullett Gin Co., 340 U.S. 361, 71 S. Ct. 337, 95 L. Ed. 337 (1951).

4 Service v. Dulles, 354 U.S. 363, 77 S. Ct. 1152, 1 L. Ed. 2d 1403 (1957).

5 Federal Deposit Ins. Corp. v. Philadelphia Gear Corp., 476 U.S. 426, 106 S. Ct. 1931, 90 L. Ed. 2d 428 (1986).

6 Federal Housing Administration v. Darlington, Inc., 358 U.S. 84, 79 S. Ct. 141, 3 L. Ed. 2d 132 (1958); In re Stupack, 274 N.Y. 198, 8 N.E.2d 485, 110 A.L.R. 1158 (1937).

7 Young v. Community Nutrition Institute, 476 U.S. 974, 106 S. Ct. 2360, 90 L. Ed. 2d 959 (1986).

2 Am. Jur. 2d Administrative Law § 78

American Jurisprudence, Second Edition | May 2021 Update

Administrative Law
Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

II. Administrative Agencies

C. Powers and Functions

4. Interpretation of Laws

b. Effect Given by Courts

§ 78. Effect of subsequent acts of legislature

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 303.1, 305, 435, 436

The courts will not apply an administrative construction which has been prohibited by subsequent legislative enactments of the same nature.[1] However, the legislature may adopt an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such construction.[2] Ratification with positive legislation makes an administrative construction virtually conclusive,[3] and reenactment of a statute is persuasive evidence of legislative approval.[4]

Footnotes

1 U.S. v. Gilmore, 75 U.S. 330, 19 L. Ed. 396, 1869 WL 11571 (1869).

2 § 77.

3 Commodity Futures Trading Com'n v. Schor, 478 U.S. 833, 106 S. Ct. 3245, 92 L. Ed. 2d 675 (1986).

4 C.I.R. v. Sternberger's Estate, 348 U.S. 187, 75 S. Ct. 229, 99 L. Ed. 246 (1955).

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